

UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF WISCONSIN
MILWAUKEE DIVISION

JOHNSONVILLE, LLC and
JOHNSONVILLE TRUCKING, LLC,

Case No. 21-CV-898

Plaintiff,

v.

Sheboygan County Case No.: 21-CV-153

LOADSMART INC. and R.B.
HUMPHREYS,

Defendants.

NOTICE OF REMOVAL

Defendant Loadsmart, Inc., (“Loadsmart”) hereby removes this action from the State of Wisconsin Circuit Court for Sheboygan County to the United States District Court for the Eastern District Court of Wisconsin pursuant to 28 U.S.C. 1441(a), on the grounds that this action is within the original jurisdiction of this Court, and as and for it short, plain statement of the grounds for removal, respectfully states and alleges as follows:

1. On or about April 23, 2021, an action was commenced in the State of Wisconsin, Circuit Court for Sheboygan County, entitled “*Johnsonville, LLC et al., v. Loadsmart Inc. et al.,*” Case No. 2021CV000153. Copies of the Summons and Complaint are attached and marked as **Exhibit A**.

2. On or about June 18, 2021, plaintiffs filed an Amended Summons and Complaint. Copies of the Amended Summons and Complaint. Copies of the Amended Summons and Complaint are attached and marked as **Exhibit B**.

3. On or about June 30, 2021, a copy of the Summons and Complaint were served

upon Loadsmart via service of process.

4. Loadsmart is informed and alleges that that Defendant R.B. Humphreys, who previously filed an admission of services in this action, consents to the removal of the case.

5. In their Amended Complaint, the plaintiffs allege, among other things, that on Loadsmart tendered a shipment of perishable food product to R.B. Humphreys on August 25, 2020 for transport from Elwood, Kansas to Dallas, Texas, that said shipment was allegedly compromised and rejected at point of destination and that, as a result of this rejection, plaintiff has been damaged in the sum of \$67,091.74. The Amended Complaint sets forth what is essentially a breach of contract claim.

6. Loadsmart is now, and at all times mentioned in Case No. 2021CV000153 has been engaged in the business of transporting property by motor vehicle interstate commers as a broker and motor carrier, pursuant to certificates and permits issued to it by the Federal Motor Carrier Safety Administration, and subject to the jurisdiction of the Surface Transportation Board, generally within the meaning of 49 U.S.C. § 13501.

7. This Court has original jurisdiction of the action pursuant to 28. U.S.C. § 1337(a) in that the plaintiffs' claim against Loadsmart arises out of an Act of Congress regulating commerce, to wit, the Interstate Commerce Act, and raise a matter in controversy over \$10,000 for a single bill of lading. This action is controlled by the Carmack Amendment to the Interstate Commerce Act, 14 U.S.C. § 14706, which makes an interstate carrier liable to a shipper for any loss, damage or injury to property shipped by it. *Adams Express Co. v. Croninger*, 226 U.S. 491, 57 L. ed. 314, 33 S. Ct. 148 (1913)(explaining the Carmack Amendment exclusively governs questions of carrier liability and preempts all state and common law remedies inconsistent with it). This action is also controlled by 49 U.S.C. § 14501, which is referred to interchangeably as the

Federal Aviation Administration Act (“FAAAA”) and the Interstate Commerce Commission Termination Act (“ICCTA”). *Luccio v. UPS, Co.*, No. 16-CV-81703, 2017 WL 412126 (S.D. Fla. Jan. 31, 2017) (holding customer’s claims against UPS for negligent handling and storage of embryos during transport was preempted by FAAAA).

8. After the filing of this Notice for Removal of this action to the United States District Court for the Eastern District of Wisconsin, written notice of the filing of this notice will be given to by the attorneys for the Defendants to the attorneys for the Plaintiffs as provided by law, and copies of this Notice will be filed with the Sheboygan County Clerk of Circuit Court.

9. Loadsmart has good and sufficient defense to this action.

10. No previous application for the relief sought has been made to this or any other court.

Dated this 30th day of July, 2021.

HINSHAW & CULBERTSON LLP
Attorneys for Defendant, Loadsmart Inc.

/s/ Tomislav Z. Kuzmanovic

Tomislav Z. Kuzmanovic
State Bar No. 1003563
Andrew P. Trevino
State Bar No. 1097542

P.O. Address:
100 E. Wisconsin Avenue, Suite 2600
Milwaukee, WI 53202
414-276-6464